

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

ROBERT VICINO,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 00-0079-B-H
	)	
KENNEBEC VALLEY MENTAL	)	
HEALTH CENTER, et al.,	)	
	)	
Defendants	)	

***RECOMMENDED DECISION***

Plaintiff has filed a Complaint pursuant to 42 U.S.C. § 1983, together with an Application to Proceed In Forma Pauperis. The Application is hereby GRANTED, and the Clerk is directed to file the action without requiring the prepayment of fees or the necessity of giving security therefor.

I nevertheless recommend Plaintiff's Complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), because Plaintiff has failed to state a claim upon which relief may be granted. Plaintiff's Complaint alleges that he suffered discrimination at the Kennebec Valley Mental Health Center ["KVMHC"] on the basis of a 1988 murder charge against him, which was later dismissed, and on the basis of false allegations that he had physically threatened workers at KVMHC.

The Kennebec Valley Mental Health Center is simply not a person within the meaning of 42 U.S.C. section 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989) (finding the same for the State Police). Further, there is no *respondeat superior* liability under section 1983. *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 691 (1978). "Liability in damages can only be imposed upon officials who were involved personally in the deprivation of constitutional rights." *Ramirez v. Colon*, 21 F. Supp. 2d 96, 98 (D.P.R. 1997) (citing *Pinto v. Nettleship*, 737 F.2d 130, 132 (1<sup>st</sup> Cir. 1984)). Plaintiff appears to have named the Executive Director of KVMHC solely on the

basis of his supervisory position within the institution. This Defendant is properly dismissed for this reason.

Plaintiff has identified only one individual, his community support worker Martha Galant, who he alleges participated in any discriminatory conduct. Specifically, he asserts that she refuses to give him a ride to computer classes in Waterville, Maine. As to Defendant Galant, however, Plaintiff has still failed to state a claim under section 1983.

The first essential element to a claim under section 1983 is state action. *Alexis v. McDonald's Rest. of Mass.*, 67 F.3d 341, 351 (1<sup>st</sup> Cir. 1995) (citations omitted). "State action" might be present if the harm is caused by the exercise of a state-created right, privilege, or rule of conduct, or "by a person for whom the state is responsible." *Id.* The state action element is a "jurisdictional requisite" to an action under section 1983. *West v. Atkins*, 487 U.S. 42, 46 (1988). Plaintiff does not assert that the conduct of which he complains involved the exercise of a state-created right, privilege, or rule of conduct. Nor has Plaintiff alleged that KVMHC is a state agency such that its employees, if indeed Defendant Galant is an employee of KVMHC, could be considered "persons for whom the state is responsible."

The second element to a section 1983 action is that "the defendants' conduct worked a denial of rights secured by the Constitution or by federal law." *Rodriguez-Cirilo v. Garcia*, 115 F.3d 50, 52 (1st Cir. 1997) (citing *Martinez v. Colon*, 54 F.3d 984 (1st Cir. 1995)). To the extent a plaintiff seeks to enforce a statute through a section 1983 action, as opposed to a constitutional provision, the statute must be one that itself creates "rights, privileges or immunities within the meaning of § 1983." *Suter v. Artist M.*, 503 U.S. 347, 356 (quoting *Wright v. Roanoke Redev. & Housing Auth.*, 479 U.S. 418, 423 (1987)).

In this case, Plaintiff has identified no statute or constitutional provision which is violated by Defendant Galant's refusal to give him a ride. Certainly his status as a 'person once charged for murder' does not make Plaintiff a member of a protected class under the equal protection clause. *See, Alexis v. McDonald's Restaurants of Mass.*, 67 F.3d 341, 354 (1<sup>st</sup> Cir. 1995) (citation omitted). Nor can the Court find authority supporting the proposition that Plaintiff has a constitutional right to transportation. In short, there is nothing in Plaintiff's Complaint suggesting a valid cause of action against Defendant Galant.

### ***Conclusion***

For the foregoing reasons, I hereby recommend Plaintiff's Complaint be DISMISSED in its entirety pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

### **NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Margaret J. Kravchuk  
United States Magistrate Judge

Dated on: April 27, 2000

STNDRD

U.S. District Court  
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 00-CV-79

VICINO v. KENNEBEC MENTAL HEAL, et al

Filed: 04/21/00

Assigned to: JUDGE D. BROCK HORNBY

Demand: \$0,000

Nature of Suit: 440

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:1983 Civil Rights Act

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plaintiff

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v.

KENNEBEC VALLEY MENTAL HEALTH  
CENTER  
defendant

JOHN D SHAW, JR  
defendant

MARTHA GALANT  
defendant